

**Dependency and Termination  
Parents' Representation  
Pilot :  
*Evaluation***

February 2002

*Washington State Office of Public Defense*

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# WASHINGTON STATE OFFICE OF PUBLIC DEFENSE

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## Mission

The Washington State Office of Public Defense (OPD) is an independent judicial branch agency. It was created by the Washington Legislature in 1996 and is governed by an advisory committee consisting of legislators, judges, attorneys, and others. Under its enabling statute, a major part of the Washington State Office of Public Defense's mission is to implement the constitutional right to counsel.

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# **Executive Summary**

In 2000, Washington State Office of Public Defense instituted a pilot program to provide enhanced legal representation to parents in dependency and termination cases in the Pierce and Benton-Franklin Juvenile Courts. This evaluation examines the quality of the representation parents are receiving, the impacts of the pilot on reducing delays in these cases, and the outcomes to children and their parents. The evaluation includes letters from the primary judicial officers of the two courts during the pilot period, a data analysis of 13,000 monthly attorney documentation forms by Northwest Crime and Social Research, and an analysis of court docket data by the Washington State Institute for Public Policy.

## **The judicial officers conclude that:**

- The courts are extremely pleased with the positive benefits of the pilot, which has resulted in more equal justice and better due process for the families involved in these cases
- Pilot attorneys' enhanced representation of parents has resulted in better communication with parents and preparation for court, more agreed orders, and more information to the courts, resulting in enhanced decision making

## **Northwest Crime and Social Research concludes that:**

- A substantial increase in reunifications has occurred – averaging 60% over the last four quarters of the pilot reporting period (during which time there was a 20% active caseload increase)
- Pilot attorneys achieved orders specifying that parents in termination cases can visit or periodically correspond with their children in an average increased 50% of the cases during the pilot
- Pilot attorneys are communicating frequently with parents and reasonably preparing for court
- Investigators, social workers, and paralegal services funded by the pilot are being used to enhance parents' representation
- Continuances and delays caused by pilot attorneys are low

## **The Washington State Institute for Public Policy concludes that:**

- SCOMIS Superior Court docket data indicates that in Pierce County Juvenile Court, more hearings were held after the pilot was implemented and hearings continuances decreased
- Conclusions could not be drawn for Benton-Franklin Juvenile Court, because the SCOMIS data reflected data entry differences
- DSHS CAMIS data needs to be analyzed to address costs savings and verification from another source of reported outcomes

## **Dependency and Termination Equal Justice Committee**

In addition to the pilot, the 2001 Legislature requested the Chair of the Washington State Office of Public Defense Advisory Committee to appoint a committee to develop criteria for a statewide program for improved parents' representation in dependency and termination cases and to examine several specific issues relating to parents' representation. The Dependency and Termination Equal Justice Committee began meeting in September 2001. With its broad membership, which includes representatives of all parties and governmental groups involved with dependency and termination cases, the Committee was able to immediately begin an educated examination of the central issues. Three subcommittees are concentrating on areas specified in the budget proviso language:

- ***Parents' access to services***
- ***Impacts of improved defense representation on the courts' caseloads, and***
- ***Expert services***

The Dependency and Termination Equal Justice Committee will issue its findings in a report in the fall of 2002, and will timely begin formulating recommendations earlier in 2002.

## **Institute for Public Policy Research Projects**

In addition to the Dependency and Termination Equal Justice Committee's work, Washington State OPD has contracted with the Washington State Institute for Public Policy to perform two research projects, pursuant to specific proviso language in the Washington State OPD 2001-2003 State Budget. The first project is an analysis of the impact of delay reductions on foster care costs. The second is to identify the factors that are reducing the number of family reunifications in dependency and termination cases.

## **Continuation of the Pilot for an Additional Year is Necessary**

At this point, Washington State OPD is requesting another year's continuation of the pilot, for two reasons. First, due to the fact that these cases often take a substantial amount of time, only 19% of the total attorneys caseload during the reporting period were cases that were both opened and closed during the pilot. It is important to examine a larger sample of these complete pilot cases, particularly in order to ascertain longer-term impacts of improved parents' representation on the timeliness, length, and outcomes for children and parents.

Secondly, continuation of the pilot offers a unique opportunity to pilot methods of obtaining earlier permanency for children presently being formulated by the statewide Dependency and Termination Equal Justice Committee. Judicial officers, court administrators, and pilot attorneys from both juvenile courts participate in the Committee, and therefore the recommendations the pilot courts conclude are appropriate may be implemented and piloted relatively quickly. A continuation of this investment for one more year can result in a demonstration of the substantial improvements in earlier permanency for children that are attainable when all the parties in these cases participate in achieving them together.

## **Summary of Pilot Benefits to the State**

- Facilitate the Department, federal and state law goal of safely reunifying children with their families if possible as the preferred permanent outcome
- Uphold principles of equal justice and fair adjudications
- Implement in a meaningful way the U.S. Supreme Court's requirement, based on the fundamental relationship between parents and their children, that attorneys be provided for indigent parents for these cases
- Provide substantially more information to judicial officers, resulting in higher quality decisions
- Demonstrate the potential for saving significant amounts of yearly foster care payments and/or publicly paid adoption support payments by making it possible for additional children to be able to safely return to their families and homes
- Reduce continuances based on parent attorneys' unavailability, enhancing earlier permanency for the children
- Encourage agreed orders based on better developed case facts, saving both parent and state attorney time as well as court time
- Provide otherwise unavailable documentation about continuances and other problems in dependency and termination cases, permitting the development of viable ways to address them to achieve earlier permanency for children

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## INTRODUCTION

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In 1999, the Legislature directed the Washington State Office of Public Defense (OPD) to “recommend strategies to ensure that an equitable method for paying for indigent defense costs in dependency and termination proceeding is established.” (Laws of 1999, SB 5744). At present, the county governments fund defense costs for indigent parents in these cases, while the state funds the costs of prosecution. The Office of the Attorney General represents the state’s position. In its report *Costs of Defense and Children’s Representation in Dependency and Termination Cases*, Washington State OPD found that per statewide representation, in 1998 the state funded the Attorney General to initiate and pursue dependency and termination cases against parents at almost three times the average amount the various counties paid parents’ attorneys.

Due largely to wide discrepancies in compensation levels, resources, and caseload size, statewide parents’ attorneys perform varied quality-level representation of their clients, from excellent to poor. Participants in dependency and termination court proceedings recognize that many parents’ attorneys are dedicated professionals who are conscientious advisors and advocates for their clients. However, due to staggering caseloads in numerous counties, it is difficult if not impossible for many parents’ attorneys to observe legal representation standards common in other types of cases. The comments made in this evaluation are in no way intended to criticize the many parents’ attorneys practicing in dependency and termination cases statewide who are doing their best within their circumstances to provide good representation to their parent clients.

The 2000 Legislature directed Washington State OPD to establish an adequate defense representation pilot program during fiscal year 2001, to be held in one eastern and one western Washington juvenile court. Benton-Franklin and Pierce juvenile courts were selected as sites. As part of the budget proviso language establishing the pilot, the Legislature directed Washington State OPD to contract for an independent evaluation in January 2001. The evaluation showed that pilot attorneys were implementing enhanced practice standards, spending the majority of their time reasonably preparing their cases and meeting with and communicating with their clients.

The 2001 Legislature continued the pilot, due to its promising beginning, and required this evaluation. The evaluation examines the impacts of enhanced parents’ representation from August 2000 through November 2001. It demonstrates that the enhanced representation improvements observed about a year ago have continued, and that parents have been able to obtain better outcomes than they were at the inception of the pilot.

**FY 2003 Funding Request.** At this point, another year’s continuation of the pilot is needed. One important reason is that a large percentage of dependency and termination cases take longer than two years. Thus far, for example, only 19% of the total attorneys’ cases during the reporting period were both opened and closed as pilot cases. It is important to examine a larger sample of these complete pilot cases, particularly in order to ascertain longer-term impacts of improved parents’ representation on the timeliness, length, and outcomes for children and parents.



Secondly, Washington State OPD requests continuation of the pilot for another year in order to test methods of obtaining earlier permanency for children by expanding it to pilot case efficiencies and improvements presently being formulated by the statewide Dependency and Termination Equal Justice Committee (DTEJ). DTEJ uniquely brings together all entities involved in these cases, and, through pilot attorney continuance reports, is providing documentation of delays frustrating early permanency for many children. Judicial officers, court administrators, and pilot attorneys from both juvenile courts participate in the Committee. Because Pierce and Benton-Franklin juvenile courts work with pilot attorneys and Washington State OPD in implementing the pilot, the Committee recommendations the pilot courts feel are appropriate may be implemented and piloted relatively quickly. Perhaps most importantly, the critical enhanced parent attorney's representation component of any earlier permanency court efforts is already in place in the pilot counties. A continuation of this investment for one more year can result in a demonstration of the substantial improvements attainable when all the parties together participate in appropriate efficiencies and accountabilities to work toward earlier permanency for the children involved.

## DEPENDENCY AND TERMINATION EQUAL JUSTICE PROJECT

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By means of budget proviso language, the 2001 Legislature requested the Chair of the Washington State Office of Public Defense Advisory Committee to appoint a committee to develop criteria for a statewide program for improved parents' representation in dependency and termination cases and to examine several specific issues relating to parents' representation in these cases.

Justice Bobbe Bridge is Chair of the Dependency and Termination Equal Justice Committee (DTEJ). Legislator members include Senator James Hargrove, Senator Mary Margaret Haugen, Senator Val Stevens, and Senator Joseph Zarelli, as well as Representative Jim Dunn, Representative Ruth Kagi, and Representative Kip Tokuda. Judicial officers include Judge George Bowden, Judge James Doerty, Judge Thomas Larkin, Commissioner Lonna Malone, Judge George Mattson, Commissioner Joseph Schneider, Commissioner Charles Snyder, and Judge Joseph Thibodeau. DSHS/AG representatives are Mr. Greg Dootson, Mr. Steve Hassett, and Mr. Patrick Noone. Parents' attorneys are Mr. Dan Fessler and Ms. Linda Lillevek. Ms. Sieglinde Gassman represents CASA, and county representatives include Commissioner Ted Anderson and Councilwoman Kathy Lambert. Resource members include Mr. Dan Erker, Pierce Juvenile Court Administrator, Ms. Sharon Paradis, Benton-Franklin Juvenile Court Administrator, Ms. Deborah Lippold, Pierce Department of Assigned Counsel pilot attorney, Ms. Jackie Shea, Benton-Franklin pilot attorney, Mr. Michael Curtis, King County Juvenile Court, Ms. Janet Skreen, Administrative Office of the Courts, Ms. Marie Jamieson, Families for Kids, and Mr. Patrick Dowd, Office of the Family and Children's Ombudsman.

The Dependency and Termination Equal Justice Committee began meeting in September 2001. With its broad membership, which includes representatives of all parties and governmental groups involved with dependency and termination cases, the Committee was able to immediately begin an educated examination of the central issues. Three subcommittees are concentrating on areas specified in the budget proviso language:

***Impacts of improved defense representation on the courts' caseloads:*** This subcommittee is reviewing the impact of continuances in dependency and termination cases, and whether earlier permanency can be achieved for children through continuance reductions of defense attorneys and other parties in the courtroom, including the court itself. Documentation of the reasons for all court continuances during the pilot period has provided an unique record of types of continuances and their frequency.

***Parents' access to services:*** Under both federal and state law, parents are entitled to services, such as parenting classes, drug treatment, and transportation, to allow them to overcome their parenting deficiencies and safely reunite with their children if possible. This subcommittee is analyzing parents' ability in the present system to obtain timely, effective services and visitation with their children.

***Expert services:*** In other court cases involving indigent parties who have a right to appointed counsel, such as criminal cases, both sides are furnished with funds to obtain expert opinions. In dependency and termination cases, almost all expert opinions are rendered by state-paid and often, state-contracted experts. This subcommittee is

examining the present provision of expert services, as well as the effectiveness of drug courts.

The Dependency and Termination Equal Justice Committee will issue its findings in a report in the fall of 2002, and will timely begin formulating recommendations earlier in 2002.

***Institute for Public Policy Research Projects***

In addition to the Dependency and Termination Equal Justice Committee's work, Washington State OPD has contracted with the Washington State Institute for Public Policy (Institute) to perform two research projects, pursuant to specific proviso language in the 2001-2003 Washington State OPD budget. The first project is to perform an analysis of the impact of delay reductions on foster care costs. The second is to identify the factors that are reducing the number of family reunifications in dependency and termination cases.

## **BACKGROUND ON DEPENDENCY AND TERMINATION CASES**

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RCW 13.34.020, part of the dependency and termination laws, declares that the family unit is a fundamental resource of American life that should be nurtured and remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized. This principle is reiterated through the state dependency and termination laws, and is central to all the federal laws as well.

Because of the life-shaping consequences of these cases, federal and state laws were passed in the late 1990s to manage dependency case timeframes in order to provide earlier decisions regarding permanent homes for the children involved. These laws reestablish the primary importance of the family, requiring the state in almost all cases to provide reasonable efforts in providing services to parents so they have an opportunity to address their parenting deficiencies and be safely reunited with their children if possible. The new laws also require parents who are seeking reunification with their children to address their parenting problems promptly, and for that reason, make it urgent that the state provide reasonable efforts services to the parents in dependency and termination cases in a timely way. Under these new laws, the courts are required to hold permanency-planning hearings within 12 months after the start of placement.

Dependency cases are initiated when they are filed by the Washington State Department of Social and Health Services (Department) alleging child abuse and neglect in order to obtain court intervention to protect the child. Termination cases are filed by the Department to sever a parent-child relationship. In many of these cases, the Department initially removes the child from the home.

In most cases, a guardian ad litem is appointed by the court to represent the best interests of a child, unless independent counsel represents the child. The guardian ad litem through counsel, or as otherwise authorized by the court, has the right to present evidence, examine and cross-examine witnesses, and be present at all hearings. The guardian ad litem receives copies of all pleadings and other documents filed or submitted to the court, and notice of all hearings according to court rules.

In dependency and termination cases, the state is represented by the Attorney General's office. Defense attorneys represent the parents, guardians, and legal custodians (hereinafter referred to as parents). In the vast majority of cases, the parents are indigent. The U.S. Constitution and Washington laws require that indigent parents be afforded court-appointed counsel, because of the fundamental importance of child-parent relationships.

Prior to 1977, the counties both prosecuted dependency and termination cases and provided defense attorneys for indigent parents. It was upon the passage of the 1977 Juvenile Court Act in Cases Relating to Dependency of a Child and the Termination of a Parent and Child Relationship, RCW 13.34, that the state assumed the obligation of prosecuting dependency and termination cases. However, funding for indigent defense services has remained the responsibility of the counties.

Dependency and termination cases consist of a series of these court hearings:

- (1) **Shelter care hearings** are to be held within 72 hours of a child being removed by the Department, in order to give the parents an opportunity to contest the child's removal from the home. The court hears evidence regarding the need for shelter care from the state and the parents. The Department is required to give copies of the records upon which it is relying prior to the shelter care hearing.
- (2) **Case conferences for services agreements** were established by the Legislature in 2001. Following shelter care and within 25 days of the fact finding hearing, parents may request a conference to develop a written services agreement with the Department and the other parties. This agreement establishes the services the Department is to provide to the parent, and is reviewed by the court at each later stage of the dependency proceedings to evaluate the performance of both the Department and the parent.
- (3) **Fact finding hearings** are to be held within 75 days of the filing of the dependency petition to determine whether the child is dependent. By statute, these are required to be scheduled and heard on an expedited basis.
- (4) **Disposition hearings** are to be held within 14 days of fact-finding to determine the child's placement based on the department's report. The report must be provided to the court and the parents at least 10 days before the hearing.
- (5) **Review hearings** are to be held every six months. In these status hearings, issues such as agency and parent completion of the disposition plan requirements, revised permanency time limits, the parents' efforts made to correct the conditions which led to removal, and so forth. The court at a review hearing may order that a petition seeking termination of the child-parent relationship be filed.
- (6) **A permanency planning hearing** is held within a year after the start of placement. The Department is required to develop a permanency plan within sixty days of assuming responsibility for providing case services. The plan must identify primary outcome goals or alternative permanency goals, such as returning home, adoption, guardianship, long term relative or foster care, or others.
- (7) **Termination proceedings** consist of motions, conferences, and trials. Terminations determine whether all rights, powers, privileges, immunities, duties and obligations, including right to custody, visitation, or support that exist between the parent and child shall be severed.

## LEGISLATIVE PILOT PROJECT REQUIREMENTS

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The legislatively directed goal of the pilot project is to enhance the quality of parents' representation in dependency and termination hearings, and to:

- (1) Reduce the number of continuances requested by pilot attorneys, including those based on their unavailability;
- (2) Establish a maximum caseload requirement of 90 dependency and termination cases per full-time attorney;
- (3) Implement enhanced defense attorney practice standards, including reasonable case preparation and the delivery of adequate client advice;
- (4) Use investigative and expert services in appropriate cases; and
- (5) Ensure implementation of indigency screenings of represented parents, guardians, and legal custodians.

## EVALUATION DESIGN

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At the beginning of the pilot program in 2000, the Institute for Public Policy began advising Washington State Office of Public Defense regarding the implementation of high-quality, independent evaluations of the project. With advisement of the Institute, Washington State OPD created a documentation form to accurately portray how attorneys spent their time and reasons for continuances. Later, outcomes of cases were added to this form. The form is filled out and submitted by each attorney for each case every month as a contract prerequisite for payment. The Institute also developed a data entry system so Washington State OPD could track these attorney documentation forms.

In January 2000, an Interim Evaluation of the pilot, prepared under the oversight of the Institute, was released. Statistical evaluation of the data from the parent attorneys forms was performed by a contractor recommended by the Institute, Northwest Crime and Social Research, Inc. In comparison with parent attorneys surveyed in 1999, the Interim Evaluation showed the pilot attorneys were spending more time communicating with their clients and preparing for court appearances, and that they requested continuances based on their unavailability for court hearings less frequently than many parents attorneys statewide.

In 2001, the Legislature re-funded the pilot program for another year, requiring that the present evaluation be submitted in February 2002. For this evaluation:

- The Institute performed a pre-post comparison of practices based on data stored in the Administrative Office of the Courts Judicial Information System, attached at Appendix 3.
- Northwest Crime and Social Research Inc. again performed a statistical evaluation of the data from the pilot attorney forms submitted for casework covering the pilot reporting period for work performed between August 2000 and November 30, 2001, attached at Appendix 2.
- The primary judicial officers of each court both before and during the pilot reporting period wrote evaluative letters, attached at Appendix 1.
- Washington State OPD wrote the narrative portion of the evaluation.

## IMPLEMENTATION OF THE PILOT PROJECT

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Pierce and Benton-Franklin juvenile courts implement court-appointed parents' representation differently. Each system is typical of many other county juvenile court parents' representation systems. Benton-Franklin Juvenile Court contracts with private attorneys who handle dependency and termination cases on a part-time basis. In Pierce County juvenile court, full-time staff attorneys at the Department of Assigned Counsel represent the majority of indigent parents in dependency and termination cases. Other parents are represented by assigned counsel, who contract with the county.

Each county has continued to fund dependency and termination defense at the pre-pilot 2000 level. As established in the 2000 budget proviso language, the pilot funds have been used to “*enhance* the quality of legal representation in dependency and termination hearings” (emphasis added) in the pilot juvenile courts.

**Pilot Initiation.** At the inception of the pilot, an additional two attorneys and two paralegals were added to the Pierce County Department of Assigned Counsel dependency and termination staff. In Benton-Franklin, the four existing panel attorneys' caseloads were reduced by about 35% in order to create half-time caseloads of 45 cases each in accordance with the pilot's budget proviso maximum caseload limits. Two new half-time attorneys were added and the existing pilot attorneys agreed to increase the number of hours spent on each case in exchange for increased monthly pay.

In both counties, the attorneys agreed by contract to adhere to adequate defense standards referenced in the pilot budget proviso language, participate in training, and spend significant time communicating with their clients, preparing their cases by obtaining information and conducting research, negotiating agreements with the state when appropriate, and using enhanced legal representation strategies and techniques when appropriate in representing their clients in court.

**Caseload Increases.** During the pilot reporting period, pilot attorneys' active caseloads increased by about 20%. This resulted from an increase in dependency and termination filings, particularly in Pierce County, and from the addition of a half-time pilot caseload in Benton-Franklin after a part-time county contract attorney who declined to participate meaningfully in the pilot was replaced by a new pilot attorney in July 2002. To manage the increased Pierce County caseload, the Department of Assigned Counsel hired an additional pilot attorney in early 2001.

**Training.** One problem faced by dependency and termination defense attorneys is that many are isolated and cannot obtain specialized dependency and termination training on a periodic basis, do not have resources such as brief or form banks, and are not overseen by experienced supervisors as are their counterparts in the Attorney General's office. In 2001, the pilot attorneys participated in a pilot conference in October and attended the statewide Children's Conference in March. Many attended the Family Preservation Services Conference in Federal Way in July. They attended pilot seminars in October 2000 and December 2000 as well. These trainings facilitated important discussion on implementing legal standards and improving the representation of parents.



**Indigency Screening.** For the most part, the parents in dependency and termination cases are among the poorest in the state. Under state law, publicly funded counsel is provided only for people who are determined, pursuant to the indigency statute RCW.10.101, to be unable to afford to hire a private attorney. The pilot budget proviso language establishes that indigency screening must be implemented for all dependency and termination parents represented by appointed counsel.

Indigency screening takes place in both the juvenile courts. Indigency screening in Benton-Franklin is handled by the juvenile court. Each parent fills out the State of Washington Indigency Determination form at court, and then is questioned by the Court Commissioner, who determines if the parent is indigent according to state statutory standards. The indigency rate is over 95%.

In Pierce County, parents are advised by the court and/or written notice that they must appear at Pre-Trial Services for an indigency screening interview. They are interviewed when they come in, and directed to the Pierce County Department of Assigned Counsel if Pre-Trial Services recommends that they are indigent according to state standards. The indigency rate of screened parents is about 95%.

## INVESTIGATORS AND EXPERTS

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The budget proviso language directs pilot attorneys to use investigative and expert services in appropriate cases. As noted in Washington State OPD's 1999 report *Costs of Defense and Children's Representation in Dependency and Termination Cases*, this is important because "(a)ny observer of dependency hearings soon notices that while the state's case is based on the work of full-time state social workers and, often, contracted experts such as doctors and psychologists, attorneys representing parents, guardians, and legal custodians generally have no social workers to investigate the facts or experts to independently analyze the state's assertions."

In 2001, Pierce County Department of Assigned Counsel employed 1.5 FTE social workers to assist clients in following up on services and attorneys in investigating and preparing for cases. How they spent their time is depicted in Appendix 2. About halfway through the pilot's first year the contracted Benton-Franklin pilot attorneys, who are private attorneys in separate offices, began hiring 'parent investigators' on an as-needed basis to assist them in the same ways. For the most part, these individuals have undergone the Superior Court's Guardian ad litem training.

Pursuant to the pilot's proviso language, resources to obtain expert services as medical and psychological evaluations were made available to the pilot attorneys and used by them in appropriate cases to obtain experts paid by these funds rather than by the Department. Washington State OPD records indicate that pilot attorneys in both counties obtained the services of 21 experts during FY 2001 and 13 experts during the first three months of FY 2002.

Washington State OPD records indicate that in Benton-Franklin Juvenile Court, individual pilot attorneys utilized the services of parent investigators' time in an aggregated 19 cases during the last half of the first year of the pilot, and submitted 40 monthly bills for part-time parent investigators, each working on multiple individual cases, during the first three months of FY 2002.

Attorneys from both pilot sites emphasize that obtaining the services of social workers and parent investigators in appropriate cases has been one of the most critical components of providing enhanced representation, particularly better communication and investigation, to parents.

## PARENTS' ATTORNEY REPORT RESULTS

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After about 13,000 monthly case documentation forms from the pilot attorneys, paralegals, and social workers were entered into the pilot database, Northwest Crime and Social Research, Inc., analyzed them to determine the outcomes for parents in closed dependency and termination cases, how much time the pilot attorneys spent on the active cases, how the attorney spent their time, whether hearing issues were being resolved by agreement as well as by contested hearings, and whether the attorneys were responsible for a significant percentage of hearings continuances. See Appendix 2.

Parameters of the data received from the pilot attorneys are as follows. First, the data represents only active cases. Cases that do not require any attorney time during a given month are called inactive cases. In inactive cases, no events are scheduled that require preparation or communication during the month. (Typical pilot examples are guardianships; in many of these, hearings are rarely scheduled unless a specific problem arises.)

Second, the data on court hearings and continuances derive from the recordings of the pilot attorneys on their monthly documentation forms, and therefore are not from a neutral third party observer. Each attorney, paralegal, and social worker statement is signed under penalty of perjury.

Third, attorney documentation forms reporting positive outcomes for parents were verified for this report by other individuals through office file audits or reviews of the specific court case files.

### Outcomes

#### **(1) Court-ordered reunifications obtained by pilot attorneys increased substantially during the pilot period.**

During the pilot's first three-month reporting period<sup>1</sup>, 15 children of parents represented by pilot attorneys were reunited with their parents, and their dependencies were dismissed. During the next year, the number of parent-child reunification orders increased by an average of 60%. These reunification orders were entered by judicial officers after they determined that reunification of the family was safe, pursuant to state law. The majority of the reunifications occurred several months after the case was filed, during which time the parents had engaged in reasonable efforts services to remedy their parenting deficiencies.

As described earlier, the active pilot attorney caseload increased by 20% during the reporting period.

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<sup>1</sup> The pilot reporting period used for the outcomes report portion of Appendix 2 and for Appendix 3 was from September 2000 through November 2001. This fifteen month period was used because, as noted in Appendix 3, at p. 1, "(t)his allows one month for each court to implement the pilot."

It is important to note that, in contrast to the pilot results, the Department reports that in FY 2001 statewide reunifications of children in foster care and their parents decreased significantly. During FY 2001, 14% fewer children who were in foster care for more than 60 days were able to reunify with their parents when compared with FY 2000. This drop appears to have been an acceleration of a statewide decrease established during the previous five years, during which the number of foster care children reunified with their parents went down by 26%.<sup>2</sup>

- (2) When reunification was not possible, pilot attorneys negotiated agreements or obtained trial orders allowing parents to visit or periodically correspond with their children in 44% of the termination cases from December 2000 through May 2001, and in 55% of the termination cases from June 2001 through November 2001.**

For families in termination cases who have a parent-child bond with each other, relinquishment with contact or visitation is often far preferable to both the child and the parent to a termination order. When these agreements can be established in an order, they are to everyone's benefit. In these situations, the Department has concluded that the visitation or periodic correspondence ordered is safe, and the family can retain ties even though they cannot live with each other. The court benefits as well, because the outcome is a more satisfactory alternative, and because, if the order is a result of a negotiated relinquishment, there usually is an enormous savings in the attorney and court time required to resolve the case.

## **Enhanced Practice Standards**

- (3) A substantial amount of attorney time is being spent on cases.**

Attorneys are averaging 3.1 hours per month on their active dependency cases, and 4.8 hours per month on their active termination cases. This is a substantial increase from what many non-pilot defense attorneys reported in a 1999 Washington State OPD survey, reporting such high caseloads that they could only spend an average of as few as 9 hours per year on each case.

- (4) Pilot attorneys are communicating frequently with parents.**

Pilot attorneys are meeting with clients before and after hearings, speaking with them on the telephone, and providing written communication to them. About one-third of their time is spent communicating with parents. Pilot training has emphasized the importance of early and clear communications, and pilot attorneys maintain this increased communication level with their parent clients throughout the case. This communication increase is critical because, as many public defense attorneys have noted, statewide many parents have very little understanding of the proceedings or of what is expected.<sup>3</sup>

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<sup>2</sup> Based on data provided by the Children's Administration in February 2001, and its 2000 Annual Performance Report.

<sup>3</sup> Washington State OPD, Dependency and Termination Equal Justice Committee Defense Attorney Survey, December 2001.

**(5) Pilot attorneys are reasonably preparing their cases.**

With lower caseloads, pilot attorneys are spending about half their time investigating and analyzing parents' cases, interviewing caseworkers and witnesses, preparing documents, and preparing for hearings.

As a result, the two judicial officers who presided over the vast majority of dependency and termination hearings in Pierce and Benton-Franklin Counties before and during the pilot period have seen major improvements in due process and equal justice in these cases. They point to the pilot attorneys' enhanced ability to contest issues when appropriate and to engage in legal techniques such as discovery, bringing more relevant information about the children and families involved to the court. See Appendix 1.

**(6) In Pierce County, social workers and paralegal services are enhancing the representation of parents under the pilot.**

As a public defenders office employing 6 or more dependency and termination attorneys within one office, Pierce County Department of Assigned Counsel was able to use part of its pilot funding to hire 1.5 FTE social workers and two paralegals to assist in preparing cases. This was an important step in attempting to implement more equalized resources for parents in these cases, as the Tacoma Attorney General's Office's dependency and termination unit employs paralegals, and the Department has numerous social workers working on these cases. The Pierce County public defender social workers and paralegals spent their time as follows:

***Social workers:*** Social workers spend over half their time communicating with parents. They spend about one-fifth of their time obtaining information for attorneys, and their remaining time assisting attorneys in preparing for cases and performing other tasks. These activities, particularly the increased communication with parents, address critical aspects of representation that are not available in most cases statewide.

***Paralegals:*** Paralegals spend over two-thirds of their time assisting attorneys in preparing for cases. About a quarter of their time is spent communicating with clients and obtaining information for cases. The availability of paralegals to assist in drafting documents has permitted the Pierce County public defenders to engage in more formal legal strategies during the pilot. One example is an increased use of court motions to resolve issues in termination cases. An increase in these hearings in the Pierce data was confirmed by the Institute's examination of SCOMIS data. See Appendix 3, Table 3.2.

## Continuance Reductions

### (7) Continuances caused by pilot attorney overscheduling are infrequent.

*Costs of Defense and Children's Representation in Dependency and Termination Cases* reported that defense attorney over-scheduling (being scheduled to be at two hearings at the same time) is a major cause of continuances statewide, and the AG reported in 1998 that the unavailability of defense attorneys is in many instances a barrier to efficient prosecution of dependency and termination hearings. Pilot attorneys, with their lower caseloads, have been able to cut their continuances resulting from being over-scheduled to only 4% of all reported continuances.<sup>4</sup>

An unanticipated major benefit of the pilot has been a detailed depiction of the continuances requested by all entities involved in the court hearings. This is allowing the Dependency and Termination Equal Justice Committee to analyze potential system-wide delay reduction techniques for these cases.

In conclusion, the pilot is greatly improving outcomes for parents and their children through enabling pilot attorneys to consistently deliver enhanced representation. Many more children have been able to safely reunify with their families, and others have been able to retain important ties with their parents even if they cannot live together. As judicial officers from both counties report, the pilot is bringing more equal justice and better due process into the juvenile courts that are deciding dependency and termination cases. Following is a summary of the costs and benefits of the pilot.

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<sup>4</sup> For almost all the 12 pilot attorneys, the 'parent attorney overscheduled' continuance level was only 2.5%. One attorney, who was in several termination trials during the pilot period and continued other hearings set for the dates during which the trials were held obtained 39% of the pilot attorney overscheduled continuances. This attorney is now implementing better continuance reduction strategies to eliminate the problem.

## SUMMARY OF COSTS AND BENEFITS OF THE PILOT

**Cost to state per year per child's case (using the number of pilot attorney dependency and termination cases open January 1, 2002 counting each child as one case):**

|  |                            |
|--|----------------------------|
| <b>Pilot: Number of Children's cases</b> | <b>1080</b>                |
| County funding                           | \$689,320                  |
| State Pilot funding                      | <u>555,505<sup>5</sup></u> |
| <b>TOTAL</b>                             | <b>\$1,244,825</b>         |

**2001 APPROXIMATE PILOT AVERAGE FUNDING PER CASE: \$1153**

### **Pilot Benefits to State:**

- Uphold principles of equal justice and fair adjudications
- Implement in a meaningful way the U.S. Supreme Court's requirement, based on the fundamental relationship between parents and their children, that attorneys be provided for indigent parents for these cases
- Provide substantially more information to judicial officers, resulting in higher quality decisions
- Facilitate the Department,
- federal and state law goal of safely reunifying children with their families if possible as the preferred permanent outcome
- Demonstrate the potential for saving significant amounts of yearly foster care payments and/or publicly paid adoption support payments by making it possible for additional children to be able to safely return to their families and homes
- Reduce continuances based on parent attorneys' unavailability, enhancing earlier permanency for the children
- Encourage agreed orders based on better developed case facts, saving both parent and state attorney time as well as court time
- Provide otherwise unavailable documentation about continuances and other problems in dependency and termination cases, permitting the development of viable ways to address them to achieve earlier permanency for children

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<sup>5</sup> Pilot funds were spent on attorneys, paralegals, experts, investigators, social workers, and training; 2% of the funds were spent on evaluative and other consultants. In 1998, AGO funding for dependencies and terminations averaged \$1138 per case (based on correspondence with the Attorney General's Office, reported in Washington State OPD's report *Costs of Defense and Children's Representation in Dependency and Termination Cases*.) Appropriately, the AGO has received additional funds since 1998 to initiate and pursue these cases, which decide matters of the highest importance. For example, \$1,876,000 in additional state funds was appropriated in 1999 in order to increase terminations filings to work toward earlier permanency. For the most part, parents' attorneys have received few or no increases due to the counties' financial straits during the past three years.

# **Appendix I**

## **Evaluative Letters of Pilot Court Judicial Officers**

*Included in this electronic representation of the original document are two letters without signatures. The electronic representation contains all text verbatim, however if you wish to view the original letters go to the link below. This link leads to three 8.5 x 11 inch scanned images of the letters and will take some time to download.*



**SUPERIOR COURT  
OF THE  
STATE OF WASHINGTON  
FOR PIERCE COUNTY**

COURT COMMISSIONERS:  
**DAVID H. JOHNSON**  
**MEAGAN M. FOLEY**  
**JAMES M. MARSHALL**  
**H. EDWARD HAARMANN**  
**MARY E. DICKE**  
**MARK L. GELMAN**

534 COUNTY-CITY BUILDING  
930 TACOMA AVENUE SOUTH  
TACOMA, WA 98402-2108

January 29, 2002

Ms. Joanne Moore  
Office of Public Defense  
P.O. Box 40957  
Olympia, WA 98504-0957

**RE: DAC PILOT PROJECT  
PIERCE COUNTY, WASHINGTON**

Dear Ms. Moore:

I am writing on behalf of the DAC Pilot Project that provided funding for additional staff in Dependency cases in Pierce County's Juvenile Court. As you may be unaware, I spent the last three years assigned to our Juvenile Court. As a result, I feel that I am in a unique position to have had the opportunity to observe a "before and after" picture of DAC's ability to provide legal services to parents involved in Dependency Court. In a nutshell, the change has been dramatic with an obvious and positive benefit to everyone involved in the system. I would be remiss, however, if I did not address several essential aspects of the Project that have been particularly noteworthy:

1. The enhanced representation afforded to parents in Dependency Court truly fosters an atmosphere that *all* parties to the proceedings are receiving equal justice and due process.
2. The enhanced representation is reflected in better attorney preparation undoubtedly due to lower caseloads. The added benefit to lower caseloads is the quality time that is now available with the clients that DAC serves resulting in better preparation while in court.
3. The enhanced representation is obviously resulting in more time to engage in discovery as contemplated by our Court Rules with motions being filed that are now supplemented with an appropriate record (that is, affidavits and/ or declarations) that give the Court sufficient information to make informed decisions.

4. The enhanced representation not only facilitates the presentation of more agreed orders but it has the additional benefit of substantially decreasing the number of continuances that are requested, particularly when matters are contested, whether they be Dependency Fact Finding matters or Petitions for Termination of Parental Rights. This results in matters being handled in the timely fashion as contemplated by the legislature and the public at large.
5. The enhanced representation obviously results in DAC's ability to effectively negotiate matters prior to going to trial thereby reducing the hostility some parents may have to an adversarial system. The "flip side" of this issue, however, is that DAC also has the additional time to actively and aggressively contest matters as they deem appropriate which is also indicative of how our system should work.

The Court is obviously interested in handling its docket as productively as possible all the while insuring that all litigants to the action have an opportunity to be heard and that all due process issues have been met. Anything that increases those goals should not only be promoted but also, quite frankly, expected. The DAC Pilot Project obviously meets those expectations and I cannot emphasize enough the absolute necessity of taking this program beyond the "project" stage into one of an institutionalized yearly funding occurrence.

Thank you for taking the time to review and consider my thoughts on this extremely important issue.

Sincerely,

Megan M. Foley  
Court Commissioner

Cc: Deborah Lippold, DAC

JUDGES

Hon. Dennis D. Yule  
Hon. Carolyn A. Brown  
Hon. Craig J. Matheson  
Hon. Vic L. VanderSchoor  
Hon. Robert G. Swisher

# BENTON-FRANKLIN COUNTIES

## JUVENILE JUSTICE CENTER

SHARON PARADIS, Administrator  
Juvenile Court Services

### SUPERIOR COURT OF THE STATE OF WASHINGTON

5606 W. CANAL PLACE, SUITE 106 • KENNEWICK, WASHINGTON 99336-1388  
PHONE (509) 783-2151 • FAX (509) 736-2728

LONNA K. MALONE  
JOSEPH R. SCHNEIDER  
Court Commissioners

January 28, 2002

Ms. Joanne Moore  
Washington State Office of Public Defense  
P.O. Box 40957  
Olympia, WA 98504

Dear Joanne,

Since 1994, I have been the Superior Court Commissioner presiding over the majority of dependency proceedings in Benton-Franklin Counties Juvenile Court. The enhanced representation for parents pilot program was instituted in the Benton-Franklin juvenile court in August, 2000, and has enhanced equal justice for parents.

In short, the court is extremely pleased with the pilot. Attorneys representing parents are better prepared due to lower caseloads, and because there is more communication between clients and their attorneys. Due in great part to better preparation and communication, parents' attorneys are entering into many agreed orders, especially in cases where the facts are not in dispute. Overall, there appears to be an appropriate balance between agreed orders and contested court hearings. Additionally, pilot attorneys are using discovery and filing motions more frequently under the pilot project, which results in more relevant information being provided to the court. The ultimate result is enhanced decision-making.

There is no doubt in my mind that the pilot is enhancing due process for the families involved in dependency and termination cases. If I can be of additional assistance, please do not hesitate to contact me.

Sincerely,

Lonna K. Malone  
Court Commissioner

# **Appendix 2**

## **Pilot Data Analysis and Results**

**Northwest Crime and Social Research, Inc.**

## **APPENDIX 2: PILOT DATA ANALYSIS AND RESULTS**

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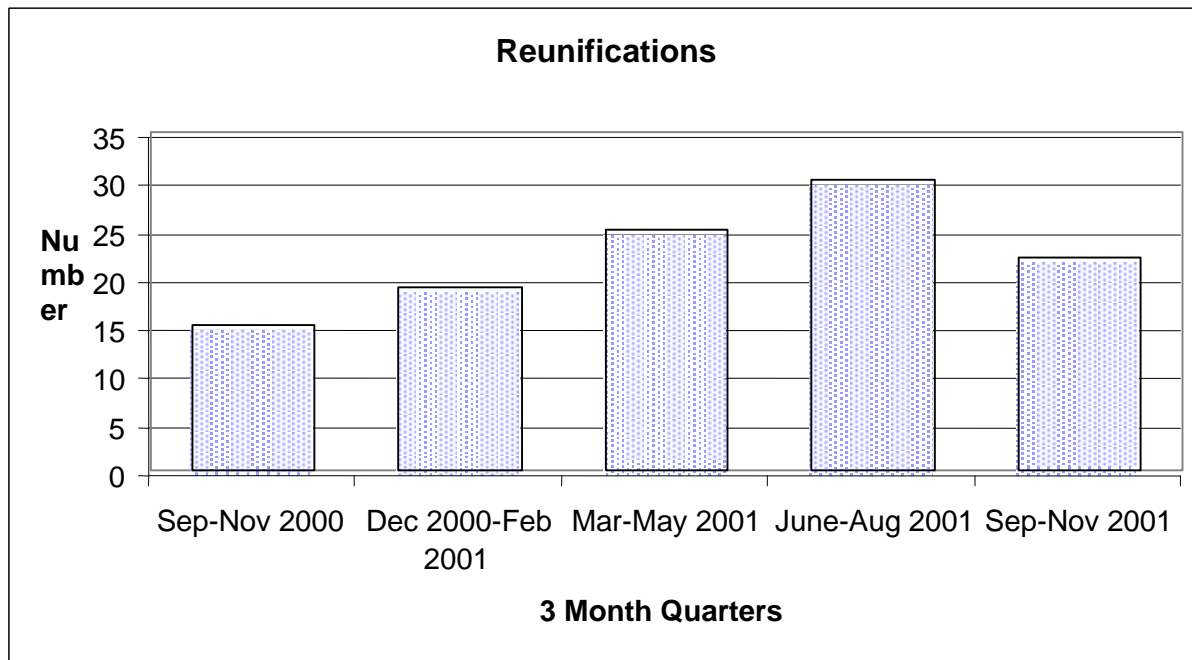
*By Northwest Crime and Social Research, Inc.*

Data from all pilot attorney case activity reports in Pierce and Benton-Franklin Counties from August 2000 through November 2001 were analyzed to address the relevant questions about outcomes, enhanced defense standards, and continuances in the Washington State Office of Public Defense Dependency and Termination Defense Pilot Project. The following tables and charts represent the results of those analyses, and address the following questions:

1. Were an increased number of parents represented by pilot attorneys able to reunify with their children?
2. In what percentage of relinquishments or terminations were parents able to obtain visitation or periodic correspondence with their children?
3. How much total time are pilot attorneys spending on active cases?
4. How did pilot attorneys spend their time?
5. How did paralegals spend their time?
6. How did social workers spend their time?
7. How many hearings were continued? Were there differences between hearing types?
8. What entities are responsible for continuances?
9. What were the reasons for the continuances?

## Were an Increased Number of Parents Represented by Pilot Attorneys Able to Reunify with Their Children?

**Table 1**  
Reunification Increases by Quarter, Compared to first Quarter of Pilot.  
September 1, 2000 – November 30, 2001



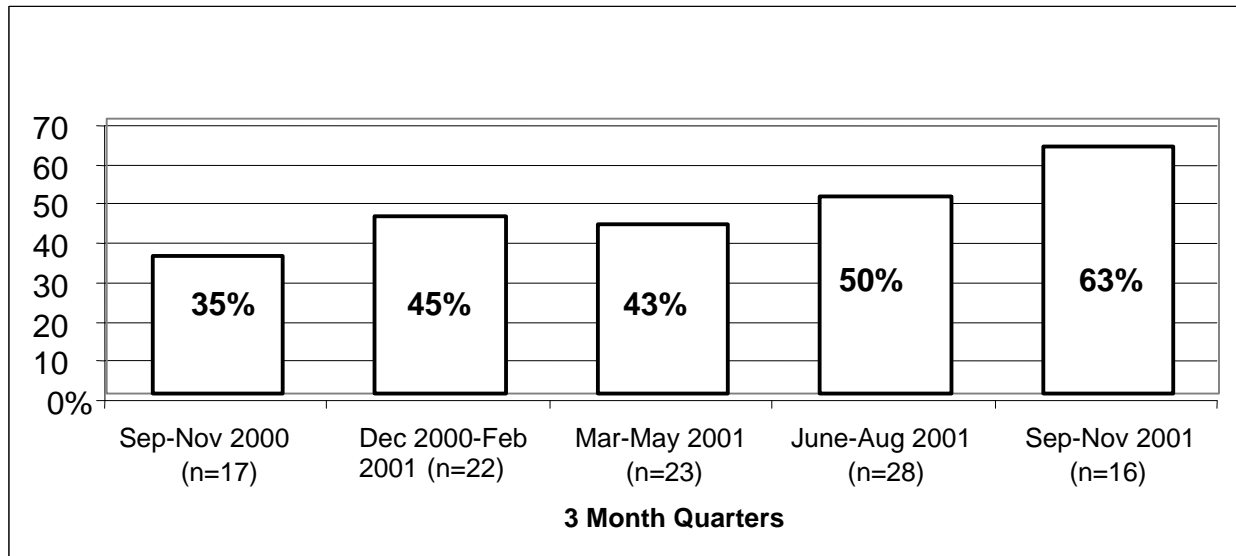
### Findings

- During the first quarter base period of the pilot, from September to November 2000, 15 parents were able to reunify with their children, and their dependency cases were dismissed.
- During the remainder of the pilot reporting period, parent-child reunifications increased from the base period level as follows:
  - December 2000 - February 2001: 27% more reunifications
  - March - May 2001: 67% more reunifications
  - June – August 2001: 100% more reunifications
  - September – November 2001: 47% more reunifications
- During the last four quarters of the pilot, parent-child reunifications increased by an average of 60% over the first quarter base period level.

Note: While reunifications increased over this time period, so did the number of active cases. However, active cases increased by 20%, a smaller increase than that of reunifications.

## In What Percentage of Relinquishments or Terminations Were Parents Able to Obtain Visitation or Periodic Correspondence with Their Children?

**Table 2**  
**Percentage of Termination Orders in Which Parents Obtained Visitation or Periodic Correspondence with Their Children**  
**September 1, 2000 – November 30, 2001**



### Findings

1. Over the course of the pilot, there was an increase in the percent of voluntary relinquishments and terminations that allowed parents' future visits or periodic correspondence with their children.
  - a. During the first quarter September to November 2000 base period, 35% of all relinquishments and terminations provided for visits or periodic correspondence between parent and child.
  - b. During the second and third quarters, from December 2000 to May 2001, an average of about 44% of all relinquishments and terminations provided for visits or periodic correspondence between parent and child.
  - c. During the fourth and fifth quarters, from June 2001 to November 2001, an average of about 55% of all relinquishments and terminations provided for visits or periodic correspondence between parent and child.

## How Much Total Time Was Spent by Pilot Defense Attorneys on Active Cases?

**Table 3**  
**Time Spent Per Month by Pilot Project Attorneys on Existing Caseload**  
**August 2000 – November 30, 2001**

| Hours Spent on Cases per Month          | Dependency Cases (n=6183) | Termination Cases (n=914) | All Cases (n=7194) |
|---|---------------------------|---------------------------|--------------------|
| Up to 1 Hour                            | 31%                       | 27%                       | 31%                |
| 1 to 2 Hours                            | 20%                       | 21%                       | 20%                |
| 2 to 5 Hours                            | 32%                       | 28%                       | 31%                |
| More than 5 Hours                       | 17%                       | 24%                       | 18%                |
| <b>TOTAL</b>                            | 100%                      | 100%                      | 100%               |
| <b>Average Hours per Case per Month</b> | 3.1 hours                 | 4.8 hours                 | 3.4 hours          |

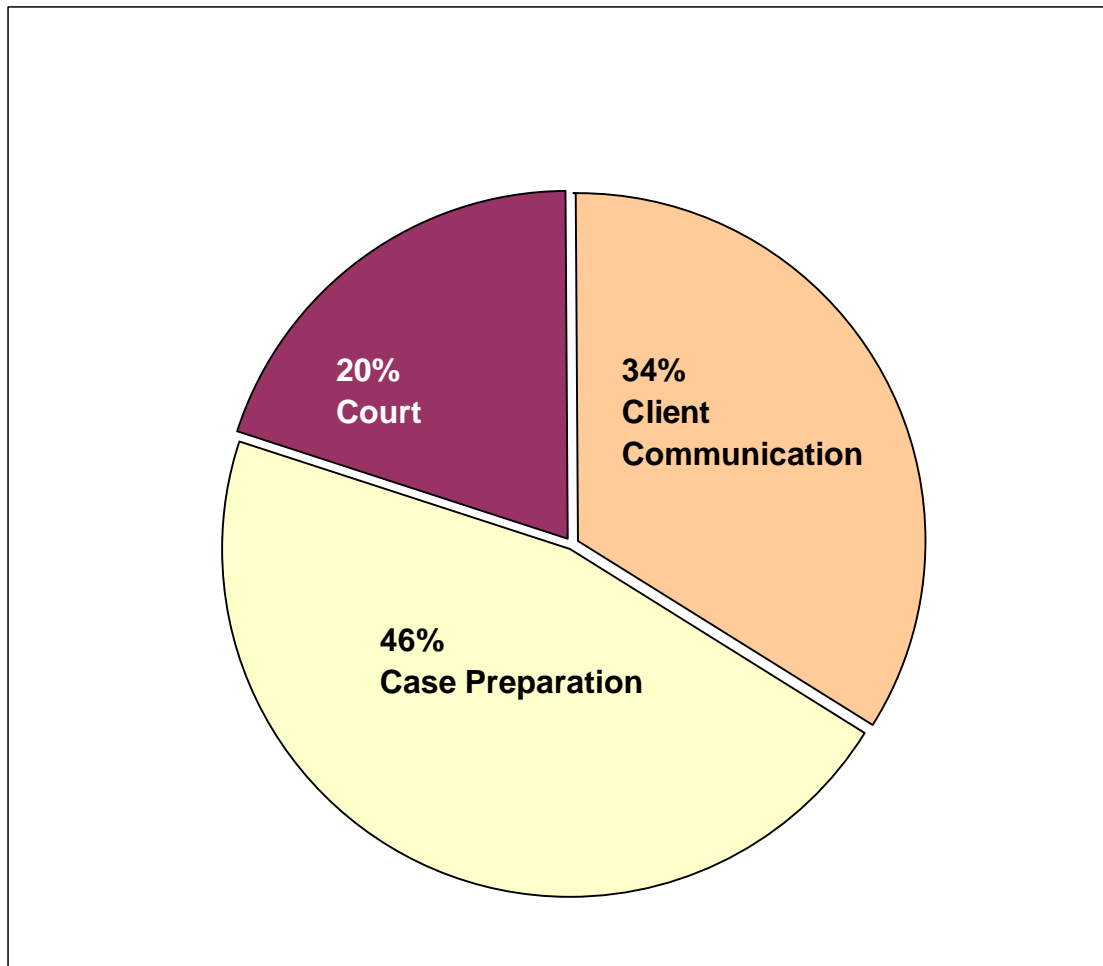
### **Findings**

1. Pilot attorneys spent an average of 3.1 hours on dependency cases and 4.8 hours on termination cases per month.
2. Pilot attorneys reported that they extended their preparation time on a total of 198 difficult cases as follows:
  - 15 to 20 hours on 37 cases
  - 21 to 30 hours on 59 cases
  - 31 to 40 hours on 16 cases, and
  - over 40 hours on 17 cases.



## How Did Pilot Attorneys Spend Their Time?

*Figure 1*  
**Percentage of Attorney Time Spent on Case Activities**  
**August 2000 – November 30, 2001**

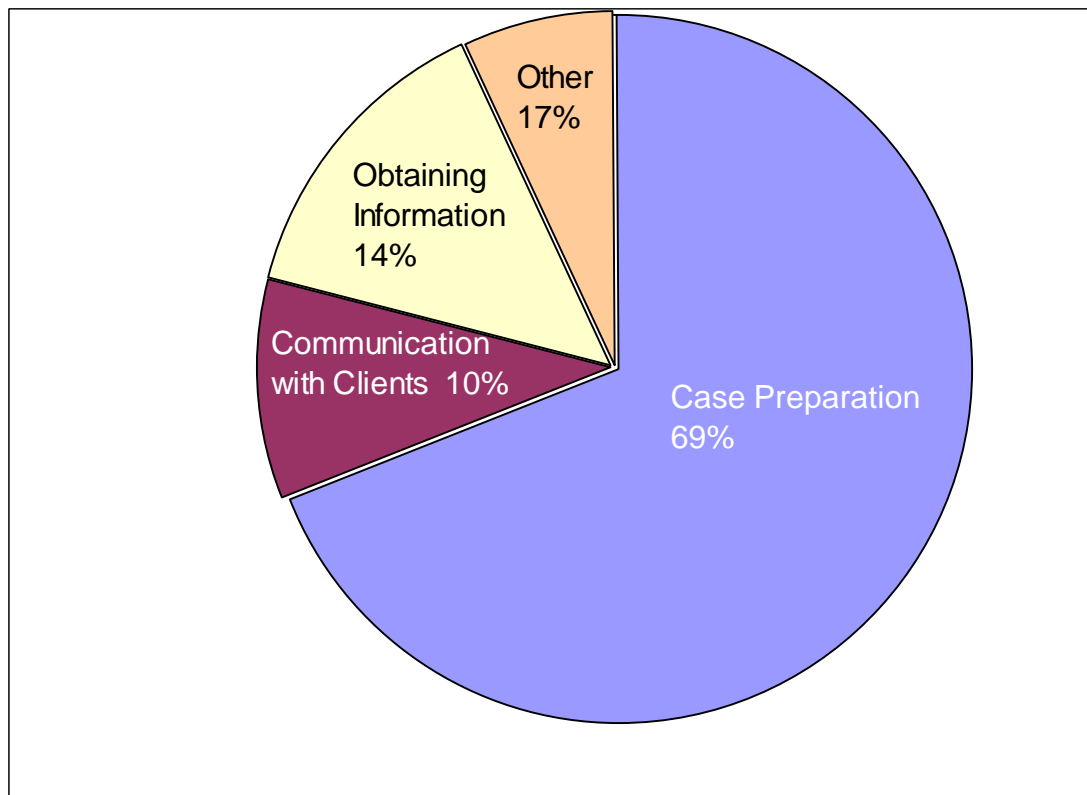


### ***Findings***

1. Pilot attorneys spent close to half their time on case preparation.
2. About one-third of the attorneys' time was spent communicating with parents.
3. One-fifth of their time was spent in court.

## How Did Paralegals Spend Their Time?

**Figure 2**  
**Percentage of Paralegal Time Spent on Case Activities**  
**August 2000 – November 30, 2001**

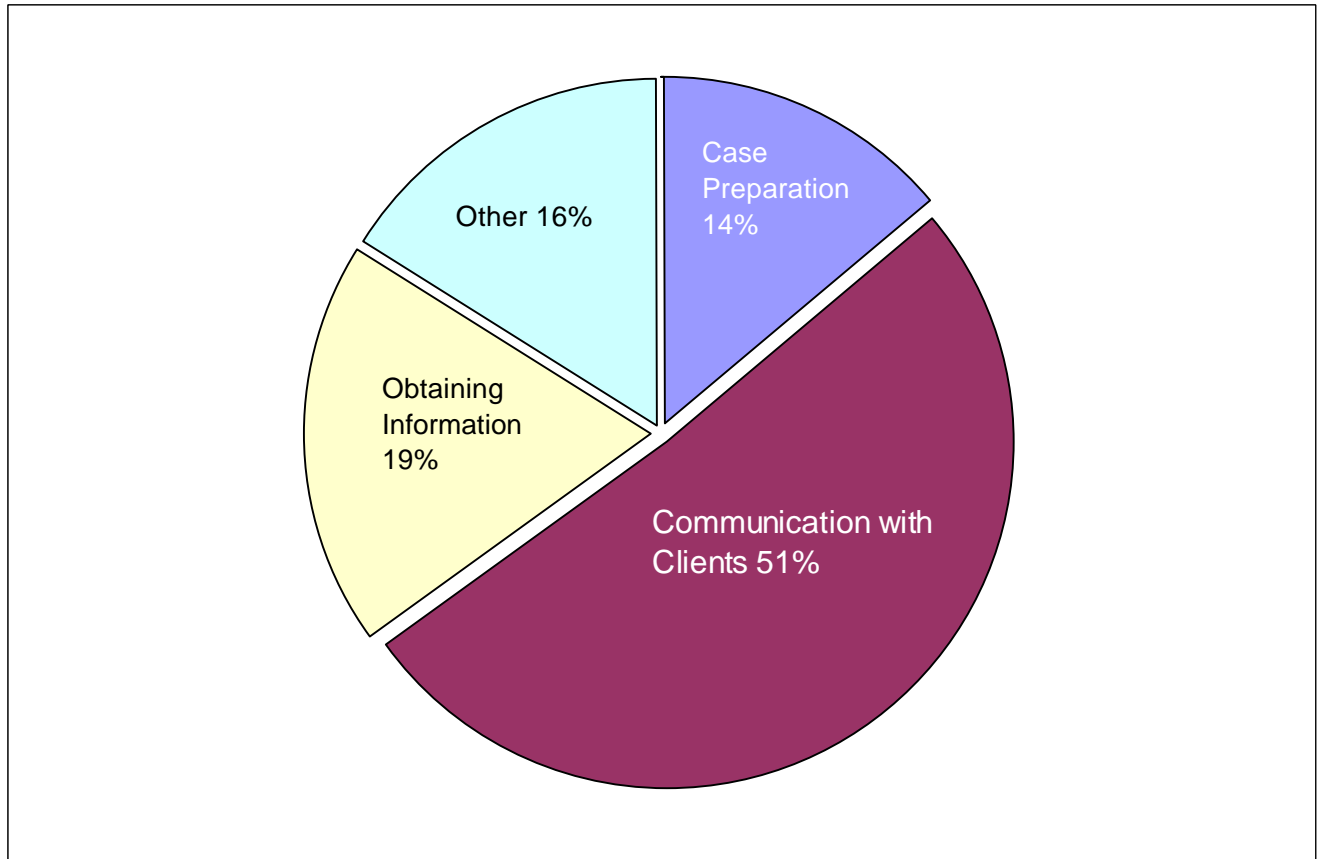


### **Findings**

1. Pilot paralegals at the Pierce County Department of Assigned Counsel spent over two-thirds of their time preparing for cases, including drafting court documents and assisting attorneys' case preparation.
2. Paralegals spent about one-quarter of their time obtaining information for attorneys and communicating with parents.
3. Most of their remaining time was spent assisting with pilot documentation requirements and other staff support tasks.

## How Did Social Workers Spend Their Time?

**Figure 3**  
**Percentage of Social Worker Time Spent on Case Activities**  
**August 2000 – November 30, 2001**



### **Findings**

1. Pilot social workers at the Pierce County Department of Assigned Counsel spent about half their time communicating with parents.
2. About one fifth of their time was spent investigating for attorneys.
3. Most of their remaining time was spent preparing for cases, performing other tasks to assist parents in their cases, and staff support tasks such as meeting with attorneys.

## How Many Hearings Were Continued? Were There Differences Between Hearing Types?

**Table 4**  
**Hearings Continued by Hearing Type**  
**August 2000 – November 2001**

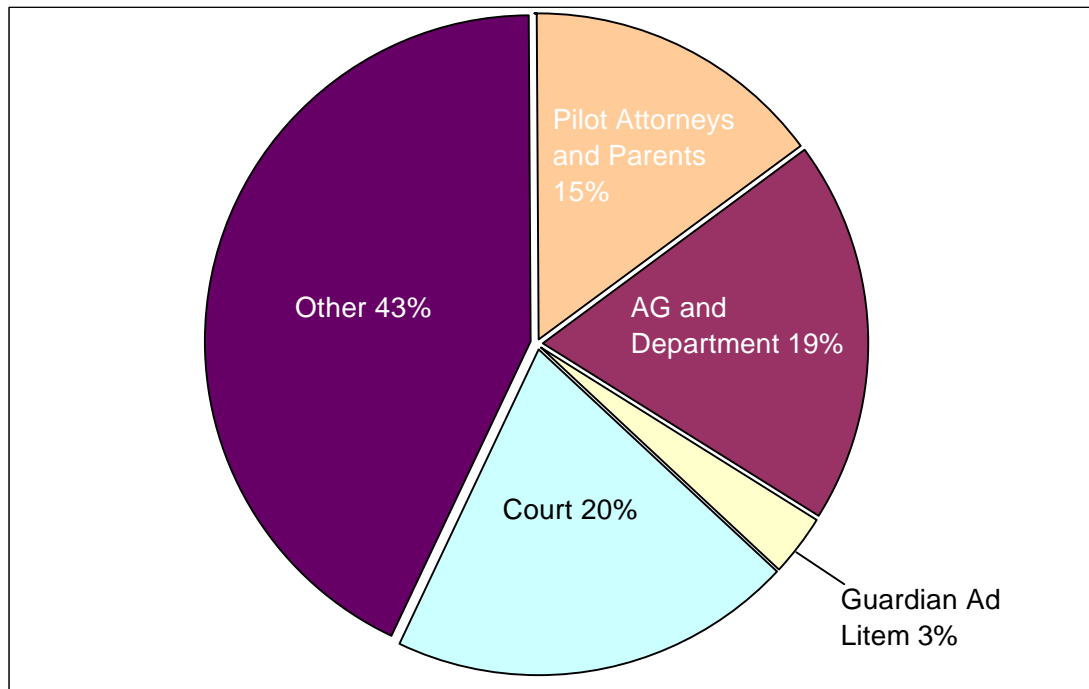
| Hearing Type        | Number of Hearings | Percent Continued |
|---------------------|--------------------|-------------------|
| Conference          | 990                | 14.0%             |
| Motions             | 797                | 10.4%             |
| Shelter Care        | 448                | 22.1%             |
| Rescheduled         | 305                | 17.4%             |
| Disposition         | 104                | 13.5%             |
| Permanency Planning | 210                | 9.5%              |
| Review              | 1754               | 14.5%             |
| Fact Finding        | 396                | 26.0%             |
| Termination         | 183                | 36.0%             |
| <b>TOTAL</b>        | <b>5187</b>        | <b>16.0%</b>      |

### ***Findings***

1. Overall, 16 % of all hearings resulted in continuances during the fifteen-month pilot reporting period.
2. Termination hearings had the largest percentage of continuances, 36 %, followed by fact-finding hearings with 26 %.
3. Permanency planning hearings and motions were continued relatively infrequently.

## Which Entities are Responsible for Continuances?

**Figure 5**  
**Entities Causing the Continuances**



### **Findings**

1. Fewer continuances were caused by pilot attorneys and parents than by either the state or the courts.
2. “Other” continuances often resulted from the court requiring additional substantive information. A number of different scenarios prompted these continuances, such as the need to get the results of a related case scheduled for trial, the need to set a contested rather than an uncontested hearing, the court’s request that a parent prepare a parenting plan, the need to obtain investigative information about relatives for placement consideration, the court’s request for written responses from parties, or other individual cases circumstances. “Other” continuances were also requested for a variety of non-substantive reasons, such as the need to appoint a guardian ad litem or attorney, overscheduled non-pilot defense attorneys, etc.

## What Were the Reasons for the Continuances?

**Table 5**  
**Reasons for Continuances**  
**August 2000 through November 2001**

| REASONS FOR CONTINUANCES           | NUMBER | PERCENT |
|------------------------------------|--------|---------|
| <b>Pilot Attorneys and Parents</b> |        |         |
| Pilot Attorney Overscheduled       | 38     | 4%      |
| Parents Didn't Appear              | 112    | 11%     |
| <b>State</b>                       |        |         |
| AG Overscheduled                   | 29     | 3%      |
| DSHS Failure to File Report        | 106    | 11%     |
| Failure to Serve Parents           | 48     | 5%      |
| <b>Guardian Ad Litem</b>           |        |         |
| Failure to File Report             | 31     | 3%      |
| <b>Court</b>                       |        |         |
| Judge or Court Overscheduled       | 192    | 20%     |
| <b>Other</b>                       | 428    | 43%     |
| <b>TOTAL</b>                       | 984    | 100%    |

### **Findings**

1. Pilot attorney overscheduling was responsible for 4% of all continuances.
2. Judge or Court overscheduling was responsible for 20 % of all continuances.
3. DSHS's failure to file reports was responsible for 11% of all continuances.
4. The Guardian Ad Litem's failure to file reports by GAL was responsible for 3% of all continuances.
5. Parents' failure to appear was responsible for 11% of all continuances.

# **Appendix 3**

## **SCOMIS Data Analysis**

**Washington State Institute for Public Policy**

## **SCOMIS Data Analysis<sup>1</sup>**

The Washington State Institute for Public Policy analyzed data from the Washington State Administrative Office for the Courts' Superior Court Management Information System (SCOMIS) to examine the impact of the pilot project on court case activity.

The pilot project includes two courts: Pierce County Superior Court and Benton/Franklin Counties Superior Court. Three county clerks' offices are responsible for keeping the legal record for these two superior courts. The Benton County and Franklin County Clerks' Offices serve the Benton/Franklin Superior Court, and the Pierce County Clerk's Office serves the Pierce County Superior Court. Although the clerks' offices use SCOMIS to record court activity, each has unique data entry practices. These differences require a separate analysis by county rather than superior court. Since Benton/Franklin is one judicial district with the same judge, the same attorneys, and the same DSHS regional office, there should be no differences in how cases are processed. However, we found differences between Benton and Franklin Counties using the SCOMIS data. This calls into question whether the SCOMIS docket data reflect actual case activity in the Benton/Franklin court.

Appendix 3 contains the analyses conducted with SCOMIS data, including analyses that lead to the conclusion that SCOMIS data cannot be reliably used to evaluate the effects of the pilot project in the Benton/Franklin Court.

## **Summary of Findings**

We found differences between Benton and Franklin Counties using the SCOMIS data. The differences observed between these two counties most likely reflect data entry differences by the county clerks' offices rather than real differences in court practice. This finding means that, for dependency and termination cases, SCOMIS data provide questionable insight into actual court practices in the Benton/Franklin Superior Court. It is not possible to determine from SCOMIS whether the pilot has been successful or unsuccessful in that court.

Pierce County Superior Court data, which were entered by a single clerk's office, may not suffer from the problems observed in Benton and Franklin Counties. Compared to cases filed before the pilot, the following statistically significant differences were observed after pilot implementation.

- Docket activity increased in the pilot cases during the first six months after filing.
- The pilot cases had more hearings during the first six months after filing.
- The likelihood that hearings would be continued (continuances per hearing) decreased in the pilot cases.
- The time to approval of a dependency petition - or a dismissal prior to approval - increased an average of 8 days in the pilot cases. This is consistent with the finding that each hearing increases the time to approval of a dependency petition.

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<sup>1</sup> Conducted by the Washington State Institute for Public Policy.



Department of Social and Health Services' Children's Administration Management Information System (CAMIS) data are needed to address whether the pilot project was able to reduce time spent in foster care. Further, CAMIS data will permit verification of the pilot attorneys' reports of increased numbers of cases in which the families were re-unified during the pilot. These CAMIS data were not available in time to be included in this report. As soon as these data are available, these additional outcomes will be examined.

### Appendix 3

## SCOMIS Data Analysis Design

Washington State Institute for Public Policy

The Washington State Institute for Public Policy was asked to analyze data from the Washington State Administrative Office for the Courts' Superior Court Management Information System (SCOMIS) to examine the impact of the pilot project on court case activity.

The pilot project includes two courts: Pierce County Superior Court and Benton/Franklin Counties Superior Court. Three county clerks' offices are responsible for keeping the legal record for these two superior courts. The Benton County and Franklin County Clerks' Offices serve the Benton/Franklin Superior Court, and the Pierce County Clerk's Office serves the Pierce County Superior Court. Although the clerks' offices use SCOMIS to record court activity, each has unique data entry practices. These differences require a separate analysis by county rather than superior court. Since Benton/Franklin is one judicial district with the same judge, the same attorneys, and the same DSHS regional office, there should be no differences in how cases are processed. However, we found differences between Benton and Franklin Counties using the SCOMIS data. This calls into question whether the SCOMIS docket data reflects actual case activity, not only for these two counties but for Pierce County as well.

### Evaluation Samples

The effects of the pilot are evaluated by comparing SCOMIS cases filed before the pilot (pre-pilot) with cases filed after implementation of the pilot (pilot). The pilot program became operational on July 13, 2000, in Pierce County Superior Court and August 2, 2000, in Benton/Franklin Superior Court. At the time of the analyses, SCOMIS data were available through October 31, 2001. The analyses presented here are based on docket activity recorded in SCOMIS during the first six months after filing. Therefore, only cases where six months of docket records are possible are included.

The **pilot** sample includes cases filed one month after pilot initiation through April 30, 2001. This allows one month for each court to implement the pilot. It also includes only those cases with at least six months of possible data before October 31, 2001, the last day for which data are available.

The **pre-pilot** sample is comprised of cases filed between January 1, 1998 and six months before the pilot began. This includes all cases with at least six months of possible data before pilot implementation.

The case sampling scheme is summarized in table 3.1. Because the pre-pilot data collection period is 24 months, while the pilot data collection period is nine months, the pre-pilot sample contains more cases than the pilot sample.

*Table 3.1*  
SCOMIS cases in Study Samples

|  | Benton County     | Franklin County   | Pierce County   |
|--|-------------------|-------------------|-----------------|
| <b><i>Pre-pilot</i></b>                      |                   |                   |                 |
| Cases filed after January 1, 1998 and before | February 2, 2000  | February 2, 2000  | January 1, 2000 |
| Number Dependency Cases                      | 140               | 56                | 653             |
| Number Termination Cases                     | 21                | 5                 | 447             |
| <b><i>Pilot</i></b>                          |                   |                   |                 |
| Cases filed before May 1, 2001 and after     | September 1, 2000 | September 1, 2000 | July 31, 2000   |
| Number Dependency Cases                      | 60                | 26                | 389             |
| Number Termination Cases                     | 17                | 8                 | 161             |

## Outcomes

The following outcomes are examined to determine differences between the pilot and the pre-pilot cases during the first six months after SCOMIS case filing:

- Case activity reflected by docket entries.
- Hearings from the docket entries.
- Continuances recorded in the docket.
- Percentage of cases with approved petitions recorded in the docket.
- The relationship between time to initial order approving the dependency petition and the number of continuances or hearings.
- Time to initial order approving the dependency petition or dismissal prior to an order of dependency.

## Case Activity

Since the pilot program involves funding additional defense attorneys to represent indigent clients, it is reasonable to assume there would be an increase in activity recorded in the SCOMIS docket for pilot cases. Case activity is measured by the number of SCOMIS docket entries within the first six months of case filing.

Table 3.2 shows that Pierce County, but not Benton or Franklin Counties, had an increase in SCOMIS docket activity following the pilot in both dependency and termination cases.

**Table 3.2**  
**Comparison of SCOMIS Docket Activity**  
**Within the First Six Months of Case Filing**

|   | Benton County |       | Franklin County |       | Pierce County |       |
|---|---------------|-------|-----------------|-------|---------------|-------|
|   | Pre-Pilot     | Pilot | Pre-Pilot       | Pilot | Pre-Pilot     | Pilot |
| <i>Average Number of Docket Entries</i> |               |       |                 |       |               |       |
| Dependency Cases                        | 39            | 39    | 37              | 41    | 34            | 39*   |
| Termination Cases                       | 19            | 22    | 27              | 20    | 23            | 27*   |

\* Statistically significant<sup>2</sup> difference between the pre-pilot and pilot cases.

## Court Hearings

With better defense representation, one might expect to see a greater number of court hearings. Table 3.3 presents the average hearing activity during the first six months following case filing. In Pierce County, the average number of hearings recorded in SCOMIS increased significantly after the pilot; but no statistically significant change was seen in the number of hearings recorded in SCOMIS for Benton or Franklin Counties.

**Table 3.3**  
**Average Number of Hearings Recorded in SCOMIS**  
**During First Six Months Following Case Filing**

|                          | Benton County |       | Franklin County |       | Pierce County |       |
|--------------------------|---------------|-------|-----------------|-------|---------------|-------|
|                          | Pre-Pilot     | Pilot | Pre-Pilot       | Pilot | Pre-Pilot     | Pilot |
| <b>Dependency Cases</b>  |               |       |                 |       |               |       |
| Fact-Finding             | 0.1           | 0.2   | 0.5             | 0.5   | 0.5           | 0.4*  |
| Motion                   | 1.0           | 1.2   | 0.5             | 0.5   | 2.1           | 1.9   |
| Review                   | 0.4           | 0.2*  | 0.4             | 0.5   | 0.4           | 0.7*  |
| Shelter Care/Contested   | 0.2           | 0.2   | 0.3             | 0.2   | 0.1           | 0.1   |
| Shelter Care/Uncontested | 0.8           | 0.9   | 0.8             | 0.8   | 1.1           | 1.1   |
| Status                   | 0.0           | 0.0   | 0.0             | 0.0   | 0.3           | 0.6*  |
| Total Hearings           | 3.3           | 3.1   | 2.8             | 2.9   | 4.8           | 5.4*  |
| <b>Termination Cases</b> |               |       |                 |       |               |       |
| Fact-Finding             | 0.1           | 0.0   | 0.2             | 0.0   | 0.3           | 0.4*  |
| Motion                   | 1.1           | 0.8   | 1.0             | 0.4   | 1.4           | 1.7*  |
| Review                   | 0.0           | 0.0   | 0.0             | 0.6   | 0.0           | 0.0   |
| Status                   | 0.0           | 0.0   | 0.0             | 0.0   | 0.1           | 0.1   |
| Total Hearings           | 1.3           | 1.1   | 1.8             | 1.2   | 1.8           | 2.2*  |

\* Statistically significant difference between the pre-pilot and pilot cases.

<sup>2</sup> Statistical significance is the likelihood that the differences are due to chance. In this report, if the likelihood of differences due to chance was 10% or less, the differences were considered to be significant.

## Continuances

One of the goals of the pilot project is to reduce defense continuances, cases can reach resolution without incurring undue delays. However, defense attorneys are responsible for a portion, but not all, of the continuances requested in cases. The attorney general and the court are also sources of continuances. SCOMIS includes docket codes for these different types of continuances, but rarely are these specific continuance codes entered in the docket. Rather, a generic continuance code is entered, and only total continuance activity can be analyzed. Continuances are measured by the number of SCOMIS continuance code docket entries within the first six months of case filing.

Table 3.4 shows the average number of continuances per case during the six months following case filing. Following the pilot project implementation, the average number of continuances per case increased in Benton County, but not in Franklin or Pierce Counties. It is noteworthy that although the average number of hearings increased following pilot implementation in Pierce County, there was not an accompanying increase in continuances.

Table 3.4

### Average Number of Continuances per Case Recorded in SCOMIS During First Six Months Following Case Filing

|                   | Benton County |       | Franklin County |       | Pierce County |       |
|-------------------|---------------|-------|-----------------|-------|---------------|-------|
|                   | Pre-Pilot     | Pilot | Pre-Pilot       | Pilot | Pre-Pilot     | Pilot |
| Dependency Cases  | 0.4           | 1.2*  | 0.6             | 1.0   | 1.5           | 1.3   |
| Termination Cases | 0.1           | 0.8*  | 0.6             | 1.0   | 0.2           | 0.3   |

\* Statistically significant difference between the pre-pilot and pilot cases.

Because a continuance is a postponement of a hearing, it is likely that an increase in the average number of hearings may also cause an increase in the number of continuances. Since Pierce County had more hearings but no more continuances during the pilot, this implies that the number of continuances per hearing was less in Pierce County. Continuances per hearing can be considered as a measure of the likelihood of a hearing being continued.

The average number of continuances per hearing is shown in Table 3.5. In Benton County, continuances per hearing increased after the pilot for both dependency and termination cases. In Pierce County, although there was no difference in number of continuances, continuances per hearing for dependency cases decreased following the pilot.

Table 3.5

### Average Number of Continuances per Hearing in SCOMIS During First Six Months Following Case Filing

|                   | Benton County |       | Franklin County |       | Pierce County |       |
|-------------------|---------------|-------|-----------------|-------|---------------|-------|
|                   | Pre-Pilot     | Pilot | Pre-Pilot       | Pilot | Pre-Pilot     | Pilot |
| Dependency Cases  | 0.1           | 0.3*  | 0.3             | 0.4   | 0.3           | 0.2*  |
| Termination Cases | 0.0           | 0.1*  | 0.5             | 0.2   | 0.1           | 0.1   |

\* Statistically significant difference between the pre-pilot and pilot cases.

## Approval of Dependency Petition: A Proxy for Case Resolution

Another assumption in the pilot is that better defense attorney representation leads to fewer dependency petitions being approved and fewer terminations of parental rights.

Case resolution is the point at which the issues in the case have been decided. In a criminal case, this event is easily recognized as a finding of guilty or not guilty. In dependency cases, however, resolution is subject to change. A dependency petition that is initially approved may later be dismissed and the child re-unified with the family. Re-unification is not an event identifiable in SCOMIS. Similarly, different parties may be dismissed from the case at different points in time, and it is not clear from SCOMIS whether the case is resolved for all parties. Also, termination cases are filed as separate SCOMIS cases without a way of linking the dependency case to the termination case. As a result, it is not possible to tell from SCOMIS whether the dependency resulted in a termination of parental rights. In addition to this ambiguity, the various clerks' offices have different data entry practices for recording case resolution.

If the court determines there is insufficient evidence to warrant approving a dependency petition, the case is resolved as dismissed. Approval of the dependency petition does not mean the case is resolved. Following an order of dependency, the court retains jurisdiction over the child. The case is dismissed when the court relinquishes jurisdiction over the child. This happens, for example, when the child is adopted, turns 18, or is re-unified with his or her family.

To obtain some measure of case outcomes that could be comparable across the courts, the entry of an order approving the dependency petition in the SCOMIS docket is used as a proxy measure for the initial resolution. If there is no order approving the dependency petition in the SCOMIS docket, and the resolution field in SCOMIS indicates the case was dismissed, then we assume the case was dismissed without an order of dependency. A case is considered unresolved in the first six months if there is no order of dependency and no dismissal without an order of dependency.

We see in Table 3.6 that data from the three counties differ from one another in the percent of dependency cases approved. In Pierce County a larger proportion of dependency petitions had been either approved or dismissed within six months than in Benton and Franklin Counties. However, in each county, implementation of the pilot did not significantly change the proportion of dependency petitions either approved or dismissed prior to approval.

Table 3.6

### Percentage of Approved Orders of Dependency Recorded in SCOMIS During First Six Months Following Case Filing

|                | Benton County            |                     | Franklin County         |                     | Pierce County            |                      |
|----------------|--------------------------|---------------------|-------------------------|---------------------|--------------------------|----------------------|
|                | Pre-Pilot<br>(164 Cases) | Pilot<br>(61 Cases) | Pre-Pilot<br>(82 Cases) | Pilot<br>(26 Cases) | Pre-Pilot<br>(792 Cases) | Pilot<br>(389 Cases) |
| Approved       | 67                       | 64                  | 62                      | 77                  | 88                       | 84                   |
| Dismissed      | 12                       | 10                  | 16                      | 4                   | 2                        | 2                    |
| Total Resolved | 79                       | 74                  | 78                      | 81                  | 90                       | 86                   |

No statistically significant difference between the pre-pilot and pilot cases.

## Relationship of Continuances and Hearings to Time to Initial Order Approving the Dependency Petition

We observe differences in the number of hearings and continuances in the pilot. We now examine how SCOMIS non-hearing, hearing, and continuance docket entries are related to the time required to reach the initial order approving the dependency. For this analysis, the number of days from case filing to the initial order approving dependency is modeled for all cases that had an order approving the dependency petition granted between July 1, 2000, and October 2001.

We discovered that two different statistical models<sup>3</sup> explain, equally well, the time it takes to get an initial order approving dependency. Both models include a common predictor, the number of non-hearing docket entries, while the models differ on the second predictor. The second predictor in Model 1 is the number of hearing docket entries, and Model 2 includes the number of continuance docket entries as the second predictor. A single model including all three predictors is confounded by the strong relationship between hearings and continuances (correlation of .72).

Table 3.7 shows the results for the two models. To illustrate, in Model 1 each non-hearing related docket entry in Benton County adds 1.2 days to the time until the initial order approving dependency, while each hearing entry adds 26.6 days. In Model 2, each non-hearing related docket entry in Benton County adds 2.7 days, while each continuance entry adds 15.1 days.

These results indicate that the number of hearings and the number of continuances increase the time it takes for a case to reach the initial order approving dependency. Unfortunately, the high correlation between hearings and continuances makes it difficult to estimate the effect of continuances in addition to hearings.

*Table 3.7*  
**Days Added to Time until First Order Approving  
Dependency Petition for Docket Activities**

|                                  | Benton County | Franklin County | Pierce County |
|----------------------------------|---------------|-----------------|---------------|
| Model 1:                         |               |                 |               |
| Percent Variance Explained       | 96%           | 79%             | 84%           |
| Additional Days per:             |               |                 |               |
| Non Hearing Related Docket Entry | 1.2           | 2.4             | 1.4           |
| Hearing                          | 26.6          | 30.8            | 9.6           |
| Model 2:                         |               |                 |               |
| Percent Variance Explained       | 92%           | 89%             | 78%           |
| Additional Days per:             |               |                 |               |
| Non Hearing Related Docket Entry | 2.7           | 2.6             | 2.3           |
| Continuance                      | 15.1          | 43.2            | 8.0           |

<sup>3</sup> Statistical regression models with high variance accounted explained by each model.

## Time to a Proxy for Resolution

Better representation for parents might affect the amount of time it takes to reach the initial case resolution, either approval of the dependency or dismissal of the case without approval. Based on the SCOMIS docket, time from initial filing until the proxy for case resolution ranged from zero days to over three years. Survival analysis is used to adjust for those cases not resolved.<sup>4</sup> Cases that were filed before the pilot implementation but resolved after the pilot are ignored.

Table 3.8 shows that the time to resolution was significantly longer for cases filed after the pilot than for cases filed before the pilot in Benton and Pierce Counties. In Franklin County, the difference in average days to resolution was not significant.

*Table 3.8*  
**Day to a Proxy for Resolution**

| Benton County |       | Franklin County |       | Pierce County |       |
|---------------|-------|-----------------|-------|---------------|-------|
| Pre-Pilot     | Pilot | Pre-Pilot       | Pilot | Pre-Pilot     | Pilot |
| 104           | 110*  | 138             | 127   | 71            | 83*   |

\* Statistically significant difference between the pre-pilot and pilot cases.

## Summary of Findings

In the SCOMIS data for Benton and Franklin Counties, the differences measured most likely reflect data entry differences by the county clerks' offices rather than real differences in court practice. This finding means that, for dependency and termination cases, SCOMIS data provide questionable insight into actual court practices in the Benton/Franklin Superior Court. It is not possible to determine from SCOMIS whether the pilot has been successful or unsuccessful in that court.

For Pierce County Superior Court, compared to cases filed before the pilot, the following statistically significant differences are observed after pilot implementation.

- Docket activity increased in the pilot cases during the first six months after filing.
- The pilot cases had more hearings during the first six months after filing.
- The likelihood that hearings would be continued (continuances per hearing) decreased in the pilot sample.
- The time to approval of a dependency petition – or dismissal prior to approval - increased an average of 8 days in the pilot sample. This is consistent with the finding that each hearing increases the time to approval of a dependency petition.

Department of Social and Health Services' Children's Administration Management Information System (CAMIS) data are needed to address whether the pilot project was able to reduce time spent in foster care. Further, CAMIS data will permit verification of the pilot attorneys' reports of increased numbers of cases in which the families were re-united during the pilot. These CAMIS data were not available in time to be included in this report. As soon as these data are available, the desired outcomes will be examined.

<sup>4</sup> Cox proportional hazards models are used to test significance adjusted for factors that affect time to approval. The days to resolution are based on Kaplan-Meier life table analysis.